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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,562 07/30/2003		Scott Smith	760-12 DIV/CON	8643
23869 HOFFM A NN	7590 05/07/2007 & RARON LIP		EXAMINER	
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE			ISABELLA, DAVID J	
SYOSSET, NY 11791		•	ART UNIT	PAPER NUMBER
		•	3738	
			MAIL DATE	DELIVERY MODE
			05/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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		Application No.	Applicant(s)				
Office Action Summary		10/630,562	SMITH, SCOTT				
		Examiner	Art Unit				
		DAVID J. ISABELLA	3738				
The MAILING Period for Reply	The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1) Responsive to	communication(s) filed on 16 No	ovember 2006					
2a)☐ This action is I		action is non-final.					
· <u> </u>	lication is in condition for allowan		rosecution as to the	merits is			
	rdance with the practice under E						
Disposition of Claims							
4)⊠ Claim(s) <u>1-13</u>	is/are pending in the application.						
4a) Of the above	4a) Of the above claim(s) <u>2,4,5 and 9-11</u> is/are withdrawn from consideration.						
5) Claim(s)	_ is/are allowed.						
6)⊠ Claim(s) <u>1,3,6</u>	-8, 12 and 13 is/are rejected.						
7) Claim(s)	_ is/are objected to.						
8) Claim(s)	_ are subject to restriction and/or	election requirement.					
Application Papers							
9)☐ The specification	on is objected to by the Examiner	•					
10) The drawing(s)	filed on is/are: a) acce	epted or b) objected to by the	Examiner.				
Applicant may n	ot request that any objection to the o	lrawing(s) be held in abeyance. Se	ee 37 CFR 1.85(a).				
Replacement dr	awing sheet(s) including the correction	on is required if the drawing(s) is o	bjected to. See 37 CFI	R 1.121(d).			
11)☐ The oath or de	claration is objected to by the Exa	aminer. Note the attached Offic	e Action or form PT0	O-152.			
Priority under 35 U.S.C	. § 119						
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>							
	Patent Drawing Review (PTO-948) Statement(s) (PTO-1449 or PTO/SB/08)	4) Interview Summar Paper No(s)/Mail D 5) Notice of Informal 6) Other:	Date	.152)			

Art Unit: 3738

## Status of the Claims

Applicant's request for continued examination filed on 11/16/2006 has been approved and entered into the file.

Claims 1-9 and 11-13 are currently pending.

Claims 2,4,5,9,10 and 11 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected speices, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/25/2006. With respect to claim 10, the subject matter of claim 10 i.e. plurality of linked stent wires is not illustrated in Figure 16.

## **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Art Unit: 3738

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,3,6,7,8,12,13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6364904.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims 1-15 are directed to the species AB, with Bbeing the wire assembly. Application claims 1,3,6,7,8,12,13, which are directed to the species AB, where B is generic stent assembly; and the claims are generic to the species of invention covered by the claims of the patent. Thus, the generic invention is "anticipated" by the species of the patented invention. Accordingly, absent a terminal disclaimer, the claims are properly rejected under the doctrine of obviousness-type double patenting. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

## Response to Arguments

Applicant's arguments filed 11/1/2004 have been fully considered and they are persuasive with respect to the rejections under Banas as set forth in the previous office action..

Art Unit: 3738

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DÀVÌØ Ĵ ISABELLA Primary Examiner Art Unit 3738

DJI 8/11/2006